

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7399 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

NARANBHAI NATHUBHAI PATEL

Versus

DY COLLECTOR

Appearance:

MR BS PATEL for Petitioner
GOVERNMENT PLEADER for Respondent No. 1
MR ANAND L SHARMA for Respondent No. 4

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 19/04/99

ORAL JUDGEMENT

1. The petitioner herein challenges the order of the Deputy Secretary, Revenue Department, State of Gujarat, passed on 31st January, 1997, in revision against the

order of the Deputy Collector, Patan, dated 20th October, 1995 in Review Case No.5 of 1995 under Section 211 of the Bombay Land Revenue Code.

2. The facts are that, the petitioner uses revenue survey No.667 Paiki of village Kahoda as Wada land for a long time. His claim was accepted by Mamlatdar, Sidhpur, by his order dated 30th March, 1991 (Annexure-C). The said order of the Mamlatdar was taken in suo moto Review Case No.5 of 1995 by the Deputy Collector, Patan, and the impugned order was passed, setting aside the order of the Mamlatdar recognizing right of the petitioner over the disputed piece of land as his Wada land. The order of the Deputy Collector was challenged in revision before the Secretary, Revenue Department and the impugned order was passed by him on 31st January, 1997 (Annexure-B), confirming the order of the Deputy Collector. This has given rise to the present petition.

3. The petitioner had raised several issues before the Revisional Authority, including question of limitation for the review by the Collector under Section 211 of the Bombay Land Revenue Code. The Revisional Authority, as can be seen from the order impugned before this Court, has not taken into consideration the question of limitation and has taken into consideration several other points, which, according to the petitioner, were not brought to the notice of the petitioner to enable the petitioner to make his submission in that regard.

4. Heard Mr. B.S. Patel, learned advocate for for the petitioner, Mr. H.H. Patel, learned A.G.P. for respondents No.1 to 3 and Mr. Sharma, learned advocate for for respondent No.4. The petitioner has highlighted two points, namely, (1) that the question of limitation is not considered by the Revisional Authority, and (2) that the Wada Patrak, which could not be produced before the Collector by the Talati, was very much in existence, as can be seen from the order of the Mamlatdar passed in 1991, which shows that there was an entry in the Wada Patrak. As regards other points, the petitioner was given no opportunity of putting forward his case and, therefore, the impugned order of the Secretary, Revenue Department, may be quashed and set aside.

5. Mr. H.H. Patel, on the other hand, had to concede on factual part that the Revisional Authority has not considered the question of limitation.

6. In the facts and circumstances of the case, Rule. With the consent of the parties, the matter is taken up

today for final hearing.

7. Considering Annexures "A", "B" and "C", it is evident that Wada Patrak was taken into consideration by the Mamlatdar while passing order Annexure-C. Papers from the office of Survey Inspector were also considered.

This order was taken in review in the year 1995, i.e. nearly after four years and, therefore, strong objection regarding limitation has been raised, which was required to be considered by the Revisional Authority and which has unfortunately not been considered by the Revisional Authority. Besides this, there are several other factual aspects which need to be taken into consideration while deciding the right of the petitioner. The ends of justice, therefore, would be served better if the order of the Revisional Authority impugned in this petition is quashed and set aside and the Revisional Authority, i.e. respondent No.2, is directed to hear the revision afresh on all points that may be urged by all concerned. Hence, so ordered. Rule is made absolute accordingly. No costs.

[A.L. DAVE, J.]

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